

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellant:	MADHAVAN	Patent Application
Application No.:	10/635,741	Group Art Unit: 2452
Filed:	August 5, 2003	Examiner: Dailey, Thomas J.
For:	METHOD AND SYSTEM OF MANAGING COMPUTING RESOURCES	

REPLY BRIEF

In response to the Examiner's Answer mailed on February 18, 2009, Appellant respectfully submits the following remarks.

REMARKS

Appellant is submitting the following remarks in response to the Examiner's Answer. In these remarks, Appellant is addressing certain arguments presented in the Examiner's Answer. While only certain arguments are addressed in this Reply Brief, this should not be construed that Appellant agrees with the other arguments presented in the Examiner's Answer.

The Examiner's Answer states at lines 12-13 of page 10, "The appellant has relied upon the statement in Kaminsky's abstract which reads..." Appellant respectfully submits that Appellant also cited paragraphs 0028, 0029, lines 3-6 of paragraph 0026, 0028-0029. Appellant also wants to add Kaminsky teaches at lines 7-9 of paragraph 0027 that the selected server, which the request is routed to, is selected using any load-balancing algorithm, such as random selection, a least recently used, or a round robin selection. Appellant understands this to mean that the servers associated with Kaminsky's server farm are operating before the selection is performed because a load balancing mechanism would require the servers to be experiencing a load in order to select the server. Further, since Kaminsky teaches using a load-balancing algorithm to select the server, Appellants understand Kaminsky's servers to be interchangeable and thus, Kaminsky, requires all of Kaminsky's servers associated with the server farm to be preconfigured and operational to respond to the same requests.

The Examiner's Answer states at lines 8-10 on page 11, "...it is well within the means and technical grasp of one of ordinary skill in the art at the time of the invention to combine the teachings of Kaminsky and Evans..." Appellant respectfully disagrees. MPEP 2141.02(VI) and MPEP 2143.01 provide guidelines as to whether combining pieces of art would be obvious to

one of ordinary skill in the art. Appellant respectfully reiterates that “[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention” (emphasis in original; MPEP 2141.02(VI); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984)). Moreover, Appellant notes that “[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious” (emphasis added) (MPEP 2143.01; *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)). Moreover, “[i]f the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed amendment” (emphasis added) (MPEP 2143.01; *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)).

Since Kaminsky requires all of Kaminsky’s servers associated with the server farm to be preconfigured and operational to respond to the same requests, Kaminsky would be rendered unsatisfactory for Kaminsky’s intended purpose if Kaminsky’s principle of operation were modified to use “resources that are not preconfigured...,” as recited by independent Claim 1. Therefore, based on the guidelines provided by MPEP 2141.02(VI) and MPEP 2143.01, it would not be within the technical grasp of one of ordinary skill in the art at the time of the invention to combine the teachings of Kaminsky with the teachings of any other piece of asserted art.

The Examiner’s Answer states at lines 3-6 on page 12, “The appellant’s contention that Kaminsky teaches away from resources not being preconfigured for use in said computing

system according to a configuration of said operating computing resource is unduly limiting what the disclosure of Kaminsky would have suggested to one of ordinary skill in the art.”

Appellant respectfully reiterates that MPEP 2141.02(VI) and MPEP 2143.01 provide guidelines as to whether combining pieces of art would be obvious to one of ordinary skill in the art and based on the guidelines provided by MPEP 2141.02(VI) and MPEP 2143.01, Appellant respectfully submits that it would not be within the technical grasp of one of ordinary skill in the art at the time of the invention to combine the teachings of Kaminsky with any other piece of asserted art, for reasons discussed herein and in the last Appeal Brief mailed November 25, 2008, among other things.

The Examiner’s Answer states at lines 11-14 on page 12, “That is, the term configured, as used in Kaminsky, need not be strictly limited to the operational configuration of computing resource, but, as is specifically, recited, may simply suggest the configuration of the inventive arrangement, e.g. the physical layout.” Appellant respectfully reiterates that Kaminsky teaches at lines 7-9 of paragraph 0027 that the selected server, which the request is routed to, is selected using any load-balancing algorithm, such as random selection, a least recently used, or a round robin selection. Appellant understands this to mean that the servers associated with Kaminsky’s server farm are operating before the selection is performed because a load balancing mechanism would require the servers to be experiencing a load in order to select a server. Further, since Kaminsky teaches using a load-balancing algorithm to select the server, Appellants understand Kaminsky’s servers to be interchangeable and thus, Kaminsky, requires all of Kaminsky’s servers associated with the server farm to be preconfigured and operational to respond to the same requests.

The Examiner's Answer states at lines 14-17 on page 12, "Kaminsky also teaches reconfiguration on-the-fly of the available computing resources as is ([0033] lines 1-5, an available server is assigned, and by handling the request, its computing resources must be reconfigured as they are configured to be in a state of execution." Appellant respectfully submits that "reconfigured" means that the computing resources were already configured and therefore lines 1-5 of 0033 teach away from "resources that are not preconfigured..." as recited by independent Claim 1.

The Examiner's Answer states from line 20 on page 12 to line 3 on page 13, "Further still, the addition of computing resources that are not preconfigured for use in said computing system according to a configuration of said operating computing resource as disclosed in Evans would not have an adverse effect on Kaminsky's existing computing resources, as there would simply be more available resources that would be able to be configured as described in Evans above..." Appellants respectfully submit that Kaminsky would be not be able to select any computing resources that are not preconfigured for use since, referring to lines 7-9 of paragraph 0027, Kaminsky uses a load balancing mechanism to select a server.

The Examiner's Answer states at lines 4-8 on page 13, "Lastly, the examiner notes one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references...Evans was relied upon to disclose a pool of free computing resources in a computing system ([0009]..." Appellant respectfully reiterates that MPEP 2141.02(VI) and MPEP 2143.01 provide guidelines as to whether combining pieces of art would

be obvious to one of ordinary skill in the art. Based on MPEP 2141.02(VI) and MPEP 2143.01, Appellant does not understand there to be a motivation to combine Kaminsky with any other pieces of cited art because Kaminsky teaches away from the embodiment recited by independent Claims 1, 15 and 22. In other words, modifying Kaminsky's principle of operation to use "...resources that are not preconfigured for use..." would render Kaminsky inoperable for Kaminsky's intended purpose because Kaminsky uses a load balancing mechanism to select a server. Using a load balancing mechanism to select a server from a server farm would require the servers in the server farm to have loads. Thus Kaminsky requires all of Kaminsky's servers associated with the server farm to be preconfigured and operational so that a load balancing mechanism can be used to select one of the servers.

The Examiner's Answer states at line 21 on page 13 to line 4 on page 14, "...the examiner contends the addition of computing resources that are not preconfigured for use in said computing system according to a configuration of said operating computing resource as disclosed in Evans would not have an adverse effect on Kaminsky's existing computing resources, as there would simply be more available resources that would be able to be configured as described in Evans..." Appellant respectfully disagrees for reasons already provided in this Reply Brief with respect to the Examiner's Answer at line 20 on page 12 through line 3 on page 13.

CONCLUSION

In view of the above remarks, Appellant continues to assert that the combination of Kaminsky and Evans do not teach, describe, or suggest the claimed embodiments, for reasons presented above and for reasons previously presented in the Appeal Brief.

Respectfully submitted,

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